

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	WT Docket No. 02-381
Services to Rural Areas and Promoting)	
Opportunities for Rural Telephone Companies)	
to Provide Spectrum-Based Services)	

To: Wireless Telecommunications Bureau

**COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND
THE RURAL TELECOMMUNICATIONS GROUP**

Rural Telecommunications Group

**Organization for the Promotion and
Advancement of Small
Telecommunications Companies**

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Dated: December 29, 2003

SUMMARY

OPASTCO and RTG applaud the Commission for continuing to develop wide-ranging proposals in its efforts to facilitate the deployment of broadband services in rural areas. By adopting many of the proposals set out in the Commission's *Notice* and in these comments, the Commission will finally provide rural operators with many of the tools necessary to finance, construct and operate meaningful wireless services in rural areas.

OPASTCO and RTG urge the Commission to: (1) define "rural area" as any county with a population density of 100 persons or fewer per square mile; (2) adopt a "keep what you use" approach to licensing in which rural carriers will have an opportunity to provide service to unused portions of geographic service areas; (3) relax power limitations in "rural" areas; (4) reserve at least one spectrum block in each newly-allocated wireless service for licensing in MSAs and RSAs; (5) create a stable regulatory environment in which the rights and responsibilities of rural carriers are more clearly defined; (6) eliminate the cellular cross-interest rule in all RSAs; (7) adopt rules to facilitate the deployment of software-defined radios; and (8) advocate for the abolition of unfunded government mandates for rural carriers. By adopting these measures, the Commission will help ensure that rural customers receive the benefits of *meaningful* wireless coverage and services and will fulfill its mandate to facilitate the deployment of wireless services to rural areas pursuant to Section 309(j) of the Communications Act.

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The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and the Rural Telecommunications Group (“RTG”)(collectively, “Rural Commenters”) hereby submit comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“*Notice*”) seeking comment on the effectiveness of its current regulatory tools in helping to facilitate the delivery of spectrum-based services to rural areas.¹ OPASTCO and RTG applaud the Commission for continuing to develop wide-ranging proposals in one of the most important rural wireless proceedings in its history, and encourage the Commission to now take the final steps to remove many barriers that have for years slowed the deployment of spectrum-based services to rural areas.

¹ *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, WT Docket No. 02-381 (October 6, 2003) (“*Notice*”).

I. STATEMENT OF INTEREST

OPASTCO is a national association of over 550 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 3.5 million consumers. Nearly one half of OPASTCO's members provide some type of wireless service. All are "rural telephone companies" as defined in 47 U.S.C. §153(37).

RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services ("PCS") to their subscribers. RTG's members are affiliated with rural telephone companies and/or are small businesses serving or seeking to serve secondary, tertiary, and rural markets.

II. COMMENTS

A. **The Commission Should Use County Population Density to Define "Rural Areas" for the Purposes of its Spectrum Policies, While Also Adopting Flexible Procedures to Ensure that Relief Is Provided to All Rural Carriers.**

In its *Notice*, the Commission seeks comment on how it should define a "rural area" for use in conjunction with the spectrum policies addressed in this proceeding.² While OPASTCO and RTG recognize that the adoption of a "rural" definition may inadvertently exclude some genuinely rural entities, the Rural Commenters agree with the Commission that the adoption of a

² *Notice*, para. 10.

uniform definition of “rural area” is warranted.³ A concrete, easy-to-apply “rural” definition will allow the Commission to target its rural-oriented spectrum policies toward the rural communities in most need of advanced wireless services.

Specifically, OPASTCO and RTG support designating any county with a population density of 100 persons or fewer per square mile as a “rural area” for use in conjunction with the spectrum policies set out in this and related Commission proceedings. The use of this predictable definition is preferable to others proposed by the Commission. For example, using Rural Service Areas (“RSAs”) or Rural Utilities Service (“RUS”) definitions as a gauge might be problematic because the geographic boundaries of such designations are constantly shifting. RSA boundaries are based on fifteen-year old census information and are likely to be re-drawn in the near future. In contrast, however, the geographic boundaries of counties are widely known and rarely change.

Defining rural areas based on county population density will have the additional benefit of affording counties rural status only so long as they remain rural. When a county’s population grows to where the county is no longer “rural,” the proposed definition would reflect this growth, excluding the county from the rural definition. This would allow the FCC to apply its definition to aid only those truly “rural areas” of the country that the Commission is seeking to aid through this proceeding. However, since the vast majority of rural counties have populations well below the 100 person per mile threshold, the overall number of changes due to fluctuating populations should be minimal.⁴

³ *Id.*

⁴ See, 1990 U.S. Census Information,
http://www.census.gov/population/censusdata/90den_stco.txt.

Despite the general appropriateness of the 100 person per mile threshold, in certain instances this proposed definition may be overly narrow. In such instances, carriers serving rural regions in counties that have more than 100 persons per square mile, yet believe they are genuinely a “rural” carrier, can avail themselves of the Commission’s waiver process in order to demonstrate other factors beyond county population density that make them decidedly “rural” in nature. During the waiver process, the Commission can make a more individualized determination about rural areas. Thus, an affected carrier may demonstrate that other definitions of rural, including RSA and RUS definitions, are applicable to their particular circumstances. However, by using the administratively simple rural proxy of county population density, the Commission will include the vast majority of rural areas in its definition, thereby minimizing the number of carriers who will seek such a waiver.

B. Abandoning the “Substantial Service” Performance Requirement and Adopting a “Keep What You Use” Regulatory Regime Will Dramatically Improve Access to “Rural” Spectrum.

In its *Notice*, the Commission asks how it should determine “use” in the context of spectrum deployment and also seeks specific comment on measures it can take to improve access to “unused” spectrum.⁵ OPASTCO and RTG urge the Commission to abandon its “substantial service” performance requirement and adopt stricter, more specific build-out obligations, which implement a “keep what you use” approach similar to the “unserved area” licensing regime established for cellular service.⁶ By holding licensees to stricter build-out requirements and allowing rural carriers to acquire licenses for and provide service to portions of service areas in

⁵ *Notice*, paras. 13-18.

⁶ *See* 47 C.F.R. §22.949.

which the original licensee has not yet constructed or operated, the Commission will further its goal of providing entities greater access to “unused” spectrum in remote and rural areas.

As a general matter, OPASTCO and RTG support the use of buildout requirements. The Commission’s use of strict rural build-out requirements in the cellular arena led to the current robust cellular service footprint that includes rural areas. A similar “keep what you use” approach to spectrum provides incentives for carriers to either build-out in rural areas or hand over the spectrum to entities ready, willing, and able to provide such service.

The Commission should refrain from repeating its recent use of the vague and nearly unenforceable “substantial service” standard. A “substantial service” requirement will not provide additional opportunities for rural carriers to access “unused” spectrum. In fact, just the opposite occurs. The vagueness of the current “substantial service” standard will most likely inhibit the deployment of wireless service to rural areas. The virtually meaningless “substantial service” requirement causes rural areas to continue to go unserved when auction winners are able to meet the requirement by serving only a small geographic area with a high population density. While no licensee has yet been required to demonstrate that it has met the Commission’s “substantial service” requirement, there is currently no evidence to support the notion that the “substantial service” requirement is facilitating the deployment of wireless services in rural and unserved areas.

The elimination of the “substantial service” performance requirement, in conjunction with the adoption of a “keep what you use” approach to licensing, will ensure that entities willing to provide services to previously unserved portions of license areas will have adequate access to spectrum. Specifically, when adopting a “keep what you use” mechanism, the Commission should specify a set period of time for construction to occur, such as half the

original license term. After half of the term is over, any area of significant size (*e.g.*, a minimum of fifty square miles) in which spectrum has not been “used” should be available for others to utilize. In determining whether spectrum is being used, the Commission should use real world propagation studies. Licensees should be required to file maps depicting their coverage area at the time of construction deadline (based on when have the term of the license is over). Based on the cellular model, the Commission should determine actual “use” pursuant to these “real world” coverage maps. In order to ensure that the most up-to-date information is submitted, the Commission should implement strict reporting guidelines for submitting underlying engineering parameters to allow the industry to “police” itself with regard to actual service provided to rural communities.

The implementation of a “keep what you use” approach will ensure that rural spectrum is not continually warehoused by carriers only interested in securing more populated areas and will provide an important means by which rural companies can access spectrum that is not allocated in very small geographic service areas. Taken in sum, the “keep what you use” mechanism will ensure *meaningful* rural coverage by carriers with licenses in rural areas and will provide real access to “unused” spectrum as contemplated by Congress when it enacted Section 309(j) of the Communications Act of 1934, as amended (“Act”).

C. Relaxed Power Limitations Will Spur Additional Deployments in Rural Areas.

OPASTCO and RTG support the relaxation of power limits for licensed and unlicensed services in rural areas, so long as such relaxation does not result in additional interference to licensed operations. Relaxed limits for licensed operations will provide much-needed relief to

rural operators by substantially reducing the costs associated with construction of such systems. While the threat of harmful interference still exists as a result of increased power in rural areas, the adoption of new interference management techniques such as the FCC's "interference temperature model" and recent innovations in technology should help reduce the threat of such harmful interference.⁷

D. The FCC Should Reserve at Least One Spectrum Block in Each Newly-Allocated Wireless Service for Licensing in MSAs and RSAs.

In its *Notice*, the Commission seeks comment on whether there is an appropriate size for licensing geographic service areas.⁸ The Commission also seeks comment on its proposal to continue to establish geographic service areas on a service-by-service basis and asks whether partitioning spectrum following an auction is more efficient than aggregating spectrum during or after an auction.⁹ OPASTCO and RTG urge the Commission to set aside at least one spectrum block for every newly-created wireless service to be licensed in RSAs and Metropolitan Statistical Areas ("MSAs"). Because partitioning and disaggregating have failed to provide rural companies with adequate access to spectrum, as discussed further in Section D (ii) below, setting aside at least one spectrum block to be licensed in MSAs and RSAs is essential to ensuring the further growth of spectrum-based services in rural areas.

⁷ See generally *In the Matter of Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, Notice of Inquiry and Notice of Proposed Rulemaking, ET Docket No. 03-237 (November 28, 2003).

⁸ *Notice*, paras. 69-70.

⁹ *Id.*, para. 66.

i. *MSAs and RSAs Encourage Deployment of Spectrum-Based Services in Rural Areas.*

The Commission has long recognized that rural markets are different than urban markets and that the Commission's rules should be adjusted accordingly to ensure that the economic benefits of spectrum-based services reach rural areas.¹⁰ In general, large "nationwide" carriers target more lucrative urban areas, while carriers with roots in rural areas specialize in serving less profitable rural areas. The Commission should keep these distinctions in mind as it develops its rules.

The demographics and physical characteristics of rural and urban areas differ dramatically. Even utilizing wireless technologies, rural areas, with their vast spaces, low population densities, difficult terrain, and harsh weather, remain expensive and challenging locations to serve. Nationwide carriers concentrate on cities, suburban areas, and highways for mobile services. Nationwide carriers generally use spectrum to target businesses and Multi-Dwelling Units ("MDUs") in dense urban areas for non-mobile spectrum services. Such a business model simply does not apply to sparsely-populated rural areas. Rural carriers have a proud tradition of serving the public interest by offering their customers new services and by utilizing their existing telecommunications infrastructure to facilitate the use of spectrum in an economically efficient manner.

Over a decade ago, the Commission ensured that cellular service would reach rural America by awarding landline telephone companies, including those landline companies serving rural areas, B Block spectrum in RSAs. The near ubiquity of cellular service in rural regions, as

¹⁰ *In re Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348 at para. 230 (April 20, 1994).

well as the large number of small, rural cellular carriers, is a testament to the success of the Commission's cellular rules and procedures. The Commission licensed the cellular spectrum in MSAs and RSAs. The use of MSAs and RSAs created a metropolitan/rural dichotomy that served the cellular market well. Carriers that were interested in serving rural customers could concentrate on these specific markets, whereas nationwide carriers could focus their attention on more-profitable urban and suburban areas. In fashioning its cellular rules, the Commission developed strict cellular buildout rules that led to the delivery of cellular service to almost all regions of the country.

MSAs and RSAs, by definition, separate rural areas from urban areas. De-linking metropolitan areas from rural areas will allow the marketplace, through the auction process, to determine an accurate valuation for each area. In addition, companies interested in providing localized service to rural areas will not have to compete against "national" companies that value a license based solely on dense urban areas. A de-linking approach benefits the public and meets the mandate of Section 309(j) of the Act, by allowing small companies interested in providing service to rural areas to do so without being held hostage by large carriers only interested in serving the more profitable populated markets.

In recent spectrum allocations, the Commission has made efforts to set aside specific spectrum blocks for licensing in MSAs and RSAs. In its recent Advanced Wireless Services ("AWS") proceeding, for example, the Commission set aside 10 megahertz of spectrum to be licensed in MSAs and RSAs. The Commission licensed the remaining 40 megahertz of available AWS spectrum in larger Economic Areas and Economic Area Groupings. In doing so, the Commission noted that "by including these varied-sized geographic service areas in [the] band plan for licensing, [the Commission] promote[s] the policy goal of disseminating licenses among

a wide variety of applicants.”¹¹ In adopting MSAs and RSAs for the AWS D Block, the Commission noted that “these local service areas...favor smaller entities, such as rural telephone companies and small service providers, with localized business plans and no interest in providing large-area service.”¹² Even though the 10 megahertz allotted to MSA/RSA AWS licenses comprised the smallest of all AWS spectrum blocks, the Commission’s decision in the AWS proceeding correctly recognizes that setting aside at least one spectrum block for these smaller geographic service areas is critical to ensuring further deployment of spectrum based services in rural areas.

ii. *Establishment of Small Geographic Service Areas is Needed Because Partitioning and Disaggregation Have Failed to Facilitate Access to Spectrum in Rural Areas.*

The need for the Commission to set aside spectrum blocks for MSAs and RSAs in each newly allocated and licensed service is underscored by the failure of partitioning and disaggregation to stimulate the rapid delivery of spectrum-based services to rural America. Specifically, by OPASTCO and RTG’s count and examination of FCC licensing records, far less than a quarter of one percent of all the licenses sold at auction have been partitioned and/or disaggregated. Accordingly, the Commission’s reliance on partitioning and disaggregation to stimulate the growth of rural markets is misplaced.

The FCC’s partitioning and disaggregation rules have failed for several reasons. The Commission’s rules do not serve as an incentive for license holders to “carve out” portions of their license areas for rural carriers. OPASTCO and RTG members have been repeatedly

¹¹ See, *In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, WT Docket 02-353 (November 25, 2003) para. 35.

¹² *Id.*, para. 39.

rebuffed in their attempts to entice license holders for various services to partition their license areas or disaggregate their spectrum.

According to many licensees, the administrative costs of entering into and managing the partitioning/disaggregation process outweigh the realized financial gains. Licensees are also unwilling to partition portions of their licenses because they want to retain the entire geographic area when they go to sell the system as a whole in the future. Licensees perceive that unpartitioned licenses will have a higher resale value. Since partitioning and disaggregation have proven costly and inefficient, acquiring spectrum at auction that is licensed in MSAs and RSAs is often the only way rural companies can provide new wireless services to their customers.

E. A More Stable Regulatory Environment Will Encourage More Investment in Rural Infrastructure.

In its *Notice*, the Commission explores ways that it may facilitate increased access to capital to fund the build out and provision of spectrum-based facilities and services in rural and underserved areas.¹³ The Commission also seeks comment on what, if any, regulatory or policy changes are necessary to complement the United States Department of Agriculture's RUS loan program.¹⁴

The most important thing the Commission can do to further facilitate access to capital for rural projects is to create a stable regulatory environment in which the rights and responsibilities of rural carriers are more clearly defined. Specifically, the Commission should move quickly to act on pending applications, and be more diligent in regulating anti-competitive behavior that

¹³ *Id. para. 72.*

¹⁴ *Id.*

often thwarts investment in rural areas. For example, rural lenders are disheartened by one-sided roaming agreements that nationwide carriers force rural providers to execute. Similarly, large carriers use their market dominance to exclude rural carriers from getting favorable terms and conditions for the newest models of handsets. The FCC currently has an on-going proceeding on roaming issues that needs to be completed that could assist rural carriers with these unfair and discriminating practices.¹⁵ What is perhaps needed the most from a rural carrier perspective, as discussed in greater detail in Section G, herein, is assurances that government mandates issued in the future are funded in rural areas where there are fewer subscribers from which to recover such costs. That, coupled with a stable, well-defined regulatory environment would provide much-needed certainty and relief to rural carriers, which in turn, would provide greater stimulus for further investment in the provision of rural wireless services.

OPASTCO and RTG applaud the efforts of RUS to provide affordable financing for rural wireless projects. However, the FCC should understand that while RUS is an important pathway to financing, it is often limited in its ability to make loans where service is already offered. Additionally, the current RUS loan rate is not that much better than that which a rural carrier could obtain from a commercial lender. The RUS loan process is also fraught with more hoops to jump through and more burdensome regulations than imposed by commercial lenders, making it unappetizing from the perspective of many rural wireless carriers.

¹⁵ *Public Notice, Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks*, CC Docket No. 94-95, DA 97-2558 (December 5, 1997).

F. In Order to Promote the Deployment of Meaningful Wireless Services in Rural Areas, the Commission Must Focus Less on Competition and More on Viable Solutions.

In its *Notice*, the Commission explores the benefits of infrastructure sharing and seeks comment on the extent to which infrastructure sharing arrangements may promote service in rural areas.¹⁶ As a general matter, OPASTCO and RTG support new initiatives that could make it easier for rural carriers to share infrastructure, which could potentially reduce costs associated with the provision of wireless services in rural areas.

Despite OPASTCO and RTG's general support for the exploration of infrastructure sharing guidelines, the FCC's focus on infrastructure sharing in its *Notice* underscores the Commission's historic misconception that competition by more than two carriers in many rural markets may be realistically accomplished. Indeed, within this *Notice*, the Commission itself has correctly recognized that, "because of economies of scale in wireless networks and lower population densities in rural areas, the economically efficient number of providers likely will be fewer."¹⁷ Such a situation does not necessarily indicate "a market failure." To the contrary, it indicates that the market is functioning as it should, resulting in the economically efficient number of carriers providing service in a given rural area, based upon the area's own unique operating profile.

Many rural and remote areas, because of their sparse populations and other demographic and geographic characteristics, may not be able to generate enough revenue to naturally sustain as many wireless service providers as more lucrative urban markets. Although many of the proposals contained within this *Notice* are designed specifically to promote the deployment of

¹⁶ *Id.*, para.106.

¹⁷ *Id.*, para. 7.

spectrum-based services in rural areas, the Commission should be aware that the number of carriers in most rural markets will never equal those in more heavily populated urban areas. Accordingly, the Commission will more quickly realize its stated goal in this proceeding by shifting its focus away from rural competition and instead, concentrate on viable proposals that, if adopted, will advance the deployment of spectrum-based services in rural areas.

In recognition of the challenges facing rural deployments, OPASTCO and RTG urge the Commission to abolish the cellular cross interest rule in all RSAs, regardless of the number of CMRS operators in a particular market. In the current marketplace, the existence of this onerous, overly-burdensome cellular cross-interest rule has prevented many rural cellular carriers from acquiring interests in adjacent market cellular operations—operations usually characterized by outdated equipment and losses in revenues.

Eliminating the cellular cross-interest rule will not have a chilling effect on competition in these rural markets because, as discussed above, competition does not exist in the vast majority of these markets. By letting market forces dictate the correct number of carriers, the Commission will help ensure that carriers that are ready and able to finance, construct and provide reliable wireless services to customers in rural areas have an opportunity to do so. Giving such opportunities to rural carriers will further the Commission's stated goals in this proceeding without diminishing the prospect of bringing wireless competition to rural areas.

Another method by which the Commission can stimulate the growth of wireless services in rural areas is by implementing rules that will make it easier to develop and deploy software-defined radios. OPASTCO and RTG applaud the Commission on initiating its recent proceeding regarding the use of smart radios and are committed to working with the FCC to ensure that such

radios become commonplace in rural areas, thus fostering the future growth of rural wireless services.¹⁸

G. Rural Wireless Carriers Should be Allowed to Invest Resources in Infrastructure and Spectrum, Rather than in Compliance with Unfunded Government Mandates.

Lastly, RTG and OPASTCO urge the Commission to continue focusing on the need for spectrum-based services in rural America and the need for policies that make such service possible in the future. OPASTCO and RTG members are providing vital mobile services that deliver enhanced 911 (“E911”) location service and other necessary public safety benefits to rural customers. Many of these provided services, such as E911 and those implementing the Communications Assistance for Law Enforcement Act (“CALEA”), are provided pursuant to what are essentially unfunded government mandates. Since the government deems these services as vital to the nation’s public safety and security, money needs to be appropriated by Congress to fund these and any future mandates.

While the FCC is not in a position to appropriate money to rural carriers to assist in the deployment of mandated services in rural areas, such as E911, CALEA, local number portability, priority access, and emergency alerts, the FCC is in a position to advocate the need for such funding by Congress. The FCC is called on by Congress time and time again to make recommendations and lend its expert agency advice to members of Congress. The FCC must let Congress know of the need to fund such mandates for rural carriers whose subscribership base is much more limited (and therefore unable to fund implementation of these mandates) than their urban counterparts.

¹⁸ See, FCC Opens Proceeding on Smart Radios, FCC News Release, December 17, 2003.

III. CONCLUSION

OPASTCO and RTG are encouraged by the Commission's commitment to speeding new and advanced spectrum-based services to rural America. OPASTCO and RTG are committed to continuing to work with the Commission to keep the policies that have worked, jettison the policies that have failed, and create new policies that deliver wireless services to rural customers. The adoption of many of the proposals set out in these comments, in addition to those outlined in the *Notice*, will finally give rural wireless carriers the ability to provide meaningful wireless services to their existing rural service areas. Should the Commission retreat from its bold initiatives, it is unlikely that such advanced wireless services will ever reach those Americans living in rural and sparsely-populated portions of the nation.

Respectfully submitted,

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